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***THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY**

W.P.No. 581 of 2005

% 24-01-2005

G. Anjaneyulu

..... Petitioner

Vs.

$ 1. The Collector (Civil Supplies), The Joint Collector, Mahabubnagar and others

… Respondents

! Counsel for the petitioner : Sri V. Manohar Rao

^ Counsel for Respondents : G.P.for Civil Supplies

<Gist :

>Head Note :

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 581 of 2005

Between:

G. Anjaneyulu, S/o. G. Venkataiah,
R/o. Palkonda, Mahaboobnagar Mandal and District.

..... PETITIONER

AND

1 The Collector (Civil Supplies), The Joint Collector, Mahaboobnagar

District.
2 The Assistant Supply Officer, Mahaboobnagar District.
3 The Revenue divisional Officer, Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.1 in removing the petitioner from Fair Price Dealership in Case No.CS7/871/2004 dt. 1-1-2005 as illegal, arbitrary and set aside the order or Respondent No.1 dated 1-1-2005 to the extent of removing the petitioner's dealership and consequently set aside the notification issued by the respondent No.3 in J/133/2005 dt. 10-1-2005 calling for applications for dealership; and pass such other order or orders.

Counsel for the Petitioner: MR.V.MANOHAR RAO

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

Petitioner was appointed as a fair price shop dealer of Palkonda village of Mahabubnagar district by the third respondent, through proceedings dated 12.01.1991. The second respondent initiated proceedings under Section 6-A of

the Essential Commodities Act, 1955 (for short 'the Act') against the petitioner before the first respondent. It was alleged that the petitioner committed certain irregularities in the matter of distribution of essential commodities. After conducting an enquiry, the first respondent passed an order dated 01.01.2005 directing confiscation of the stock seized from the petitioner and imposed a penalty of Rs.5,746/-. The first respondent also directed that the petitioner be removed from the dealership of the fair price shop. The petitioner challenges the order dated 01.01.2005 passed by the first respondent insofar as it relates to the direction as to his removal from the dealership.

Sri V. Manohar Rao, learned counsel for the petitioner, submits that the scope and ambit of the proceedings under Section 6-A of the Act initiated before the first respondent was limited and the maximum that could have been done by the first respondent was to have ordered confiscation of the seized stock. He submits that the authority to appoint an individual as a dealer of a fair price shop is the Revenue Divisional Officer and the question of removing the existing dealer by the authority, under Section 6-A of the Act, does not arise. He also contends that under the A.P. State Public Distribution System Control Order, 2001, the first respondent is the appellate authority against any order passed by the third respondent cancelling the authorization of a fair price shop dealer and in that view of the matter, the impugned order to the extent indicated above is unsustainable.

Learned Government Pleader for Civil Supplies, on the other hand, submits that the direction as to removal of the petitioner from the dealership is only consequential to the order of confiscation passed under Section 6-A of the Act and that no exception can be taken to the same. He also contends that the petitioner had an effective remedy by way of appeal under Section 6-C of the Act and he can canvass the present grievances also in that.

The proceedings under Section 6-A of the Act were initiated against the petitioner before the first respondent. Two charges, namely he was indulging in clandestine business in relation to the commodities meant for public distribution and that he misappropriated certain quantities of PDS rice and kerosene oil meant for the distribution in the month of August 2004, were framed against him. The petitioner responded to the notice and submitted his explanation. Not being satisfied with the explanation offered by the petitioner, the first

respondent directed confiscation of the commodities seized from the petitioner. If the petitioner feels aggrieved by the same, he has to avail the remedy of appeal provided for under Section 6-C of the Act. In addition to directing confiscation of the seized commodities, the first respondent directed that the petitioner be removed from the dealership of the fair price shop. In this context, it needs to be seen that appointment of dealers for fair price shops and other matters relating thereto are governed by the Control Order, 2001. The third respondent is the appointing authority. It is he who is conferred with the power either to appoint a person as a dealer or to cancel the dealership. Mere confiscation of essential commodities in the proceedings under Section 6-A of the Act cannot by itself result in cancellation of the dealership. For that purpose, separate and independent proceedings have to be initiated by the competent authority, viz. the third respondent. Clause 5(4) of the Control Order mandates that any such action shall precede a show cause notice as well as an enquiry. Therefore, the direction issued by the first respondent for removal of the petitioner from dealership cannot be sustained.

For the foregoing reasons, the impugned order insofar as it relates to the cancellation of the authorization of the petitioner is set aside. This order, however, does not preclude the Revenue Divisional Officer, Mahabubnagar, the third respondent, from initiating the proceedings against the petitioner in accordance with the relevant provisions of law.

The writ petition is accordingly allowed. There shall be no order as to costs.

24.01.2005

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To

1 One fair copy to the Hon'ble Sri Justice L. Narasimha Reddy (for His Lordships kind perusal)

2 The Joint Collector, (Civil Supplies), Mahaboobnagar District.
3 The Assistant Supply Officer, Mahaboobnagar District.
4 The Revenue divisional Officer, Mahaboobnagar District.

5 Two C.Cs. to the Government Pleader for Civil Supplies, High Court of A.P., Hyderabad, (OUT).

6 Two C.D. Copies.

7 8 L. R. copies.

8 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

9 The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.